

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NINA AGDAL,	.
	.
Plaintiff,	.
	. Case No. 23-cv-16873
vs.	.
	. Newark, New Jersey
DILLON DANIS,	. October 2, 2024
	.
.	.
	.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (the parties appeared in person):

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1 (Commencement of proceedings)

2

3 THE COURT: All right. This is Nina Agdal versus
4 Dillon Danis, 23-16873.

5 Can I have appearances, please, beginning with
6 plaintiff's counsel.

7 MR. SHUMOFSKY: Good morning, Your Honor. Joseph
8 Shumofsky, Sills Cummis & Gross, for plaintiff Nina Agdal.

9 THE COURT: All right. Thank you.
10 And for the defense?

11 MR. DOHERTY: Good morning, Your Honor. Paul S.
12 Doherty III, at Hartmann Doherty Rosa & Berman, on behalf of
13 defendant Dillon Danis, who is seated to my right.

14 THE COURT: Yes. Today he is. Yesterday, not so
15 much.

16 So what happened yesterday?

17 MR. DANIS: I was sick. I've been sick. And I
18 told my lawyer that.

19 MR. DOHERTY: And I'll --

20 THE COURT: When did you tell your lawyer,
21 Mr. Danis?

22 Do you mind me asking your client about this,
23 Mr. Doherty?

24 MR. DOHERTY: I do not, Judge.

25 THE COURT: All right. When were you sick?

1 | Because this thing was scheduled for quite a while.

2 | MR. DANIS: Yes --

3 | THE COURT: And, frankly, it got a little -- it
4 | seems a little convenient to me that you suddenly became
5 | sick.

6 | MR. DANIS: I was like a month sick. And then I
7 | had to go to the doctor because it wasn't getting better --

8 | THE COURT: When?

9 | MR. DANIS: It would have to be this whole last
10 | month. And then I --

11 | THE COURT: No. When did you go to the doctor?

12 | MR. DANIS: Maybe two weeks ago? Not even.

13 | And then they put me on antibiotics. So the
14 | antibiotic's going to kill my stomach. And I haven't been --

15 | THE COURT: So you haven't gone anywhere else
16 | either? Out?

17 | MR. DANIS: No. Not --

18 | THE COURT: Any events? Nothing?

19 | MR. DANIS: Not that I recall.

20 | THE COURT: Do you have any contrary information,
21 | Mr. Shumofsky?

22 | MR. SHUMOFSKY: Nothing in particular, Your Honor.
23 | Other than stuff where he finds time to still tweet about
24 | this court proceedings and my client.

25 | MR. DANIS: I didn't -- about your client.

1 THE COURT: All right.

2 So, Mr. Danis, you know that you have your
3 deposition on Tuesday; right?

4 MR. DANIS: Yes, Your Honor.

5 THE COURT: And you understand you have to go to
6 that?

7 MR. DANIS: Yes.

8 THE COURT: All right. So you'll be there. Yeah?

9 MR. DANIS: Yeah, as long as I have my counsel.

10 THE COURT: Yeah.

11 MR. DANIS: A lawyer.

12 THE COURT: Sure.

13 MR. DANIS: But that's what I was saying, if they
14 retracted a --

15 THE COURT: No. So -- well, let me ask.

16 Mr. Shumofsky, are there any other issues? Look,
17 here's what I'm thinking.

18 I understand the issue, the applications in front
19 of me.

20 So let me ask Mr. Danis, do you oppose the
21 application to withdraw?

22 MR. DANIS: It depends on if we can come to
23 agreement because me and him have been butting heads, and I
24 provided all the --

25 THE COURT: Hold on. I don't want to -- I don't

1 want to interrupt you, and I am not trying to be
2 disrespectful --

3 MR. DANIS: No, you're good.

4 THE COURT: I don't want you to -- I don't want to
5 you -- I am not trying to impinge on the attorney-client
6 privilege. So if you've had conversations with your
7 attorneys about the substance of the case, which I'm sure you
8 have --

9 MR. DANIS: Yes.

10 THE COURT: -- I don't want to delve into those.
11 All I want to understand is if -- so in the
12 application --

13 MR. DANIS: The application is?

14 THE COURT: This is the motion for leave to
15 withdraw. This is the application that Mr. Berman filed on
16 September 12th.

17 Have you seen it? Do you need a copy?
18 You gave him a copy, Mr. Doherty?

19 MR. DOHERTY: Yes, I just provided him with one.

20 THE COURT: So, in sum, Mr. Berman tells me,
21 frankly, that there are two problems there. Problem 1 is
22 that you haven't paid the firm's monthly invoices --

23 MR. DANIS: I've never missed a payment, sir. I
24 might be late sometimes. I have an accountant dealing with
25 it. I have a lot going on. You know, my dad just passed

1 and --

2 THE COURT: I'm sorry to hear that.

3 MR. DANIS: And I have a newborn, and sometimes my
4 accountant may be -- I mean, I've never not paid them. I've
5 paid every single time. Maybe a week late. Not even.

6 MR. DOHERTY: He just --

7 THE COURT: Well, look, that's really a matter
8 between you and them.

9 All I'm -- I guess all I'm saying is I don't want
10 to intrude on the attorney-client relationship. Right?
11 That's just an appropriate role for Court.

12 But if there's at least the possibility of
13 representation of Hartmann Doherty, Mr. Berman and the firm
14 continuing to represent you, we should know; right? Because
15 then I won't rule on the motion to withdraw -- which,
16 frankly, I am not inclined to grant until at least after the
17 deposition -- and I want to hear from Mr. Shumofsky on
18 that -- because, frankly, this entire issue concerning the
19 phone has been, you know, dragged out and it slowed the case
20 up. And I always --

21 MR. DANIS: I have the phone. I just didn't -- he
22 was in the --

23 THE COURT: You have the phone.

24 MR. DANIS: Yeah, Mr. Berman wasn't talking to
25 me --

1 THE COURT: Did you know that, Mr. Shumofsky?

2 MR. SHUMOFSKY: First we learned of this,
3 Your Honor.

4 THE COURT: Well, I'm glad we're all together to
5 run these issues to ground.

6 MR. DANIS: I answered all the questions, and he
7 didn't want to put it in because I didn't pay, because I
8 thought he was withdrawing, so I didn't pay --

9 THE COURT: Hold on. Yeah, we'll come back to the
10 phone.

11 But, look, I don't know. Mr. Doherty, you have to
12 tell me how you want to proceed because you're -- and I
13 understand you're filling in for Mr. Berman today. So you
14 might know only so much. And I appreciate you pinch-hitting
15 for Mr. Berman today.

16 If there is at least -- look, I guess it'll play
17 itself out. So I am not going to grant the application for
18 withdrawal until, at a minimum -- and I want to give
19 Mr. Shumofsky an opportunity to be heard on this -- certainly
20 not before the October 8th deposition because that should
21 proceed and at least get that part of it advanced or get this
22 discovery further down the road.

23 After that -- and, again, subject to what the
24 parties want to tell me, we would have to -- then I would
25 take the motion for leave to withdraw under consideration.

1 So it seems to me, at least, then, practically
2 speaking, that will give Mr. Danis and counsel further time
3 to discuss themselves any issues in the attorney-client
4 relationship, whether they can be repaired, whether they
5 can't be repaired, and counsel still wants to withdraw -- I
6 don't know.

7 Mr. Doherty, tell me what -- if you have any input
8 on this?

9 MR. DOHERTY: Certainly. Thank you, Judge.

10 I've been the managing partner of our firm for 26
11 years until it was founded. I can assure the Court that it's
12 a rare circumstance for my firm to be moving to withdraw. So
13 I think it's both a matter of money and then, perhaps, more
14 importantly, a lack of communication from Mr. Danis to
15 Mr. Berman.

16 So we understand that it's a burden on the Court
17 when we move to withdraw. And we -- you know, we don't take
18 this lightly. It's something that we rarely do.

19 But, Mr. Berman, felt that under the specific
20 circumstances of this case, that he should move to withdraw.

21 THE COURT: No, I understand that. And that comes
22 through in his application.

23 But, I mean, I can't -- no. I need you to tell me
24 or Mr. Berman to tell me whether the parties at least want
25 further discussion between and among themselves to see if the

1 attorney-client relationship can be salvaged or not.

2 If the answer is no, then the answer's no.

3 But if the answer is, Judge, let's come back to
4 this, and we'll have further discussions with Mr. Danis and
5 let you know in the next week, two weeks, et cetera, then I'm
6 amenable to that as well.

7 But you have to tell me.

8 MR. DOHERTY: Judge, my understanding is that
9 Mr. Berman feels that there's no hope of salvaging this
10 attorney-client relationship. Otherwise, we would not have
11 filed the motion.

12 Of course, if the Court directs our firm to appear
13 at the deposition on the 8th, we will be there, and we
14 will --

15 THE COURT: That has to happen.

16 MR. DOHERTY: And we will zealously advocate for
17 Mr. Danis's interests.

18 THE COURT: All right. I appreciate that,
19 Mr. Doherty.

20 Mr. Shumofsky, anything on this that you want to
21 tell me? And I know we still have to double back to the
22 phone.

23 MR. SHUMOFSKY: Yes, Your Honor. I mean, the
24 topics kind of overlap on one another.

25 THE COURT: Right.

1 MR. SHUMOFSKY: Focusing on the motion to withdraw,
2 which Your Honor's inquired about -- obviously, to the extent
3 that this motion is still pending, Your Honor's ultimately
4 going to rule on it at some point or opposing counsel's firm
5 may come to a different determination based on the
6 relationship with Mr. Danis.

7 We wanted to flag for the Court obviously, this is
8 a unique circumstance insofar as, if Mr. Danis does not have
9 counsel and he ends up not getting other counsel -- because,
10 despite what Mr. Danis said today, there were representations
11 that he wasn't paying, so if that's an issue, he can't get
12 new counsel, there is the issue of pro se, and there's
13 "attorney-client eyes only" issues.

14 So before the Court would ever rule on any motion
15 going forward, we'd like an opportunity to discuss how to
16 address that because we'd want to change the confidentiality
17 order, and we'd have to address those types of things, could
18 be a unique circumstance.

19 THE COURT: Right.

20 MR. SHUMOFSKY: Putting that aside, the observation
21 is, besides the money issue, Mr. Berman, who we -- Your Honor
22 has said, we have no reason to think he's not representing
23 earnestly to the Court. He was here yesterday. He didn't
24 say anything about the phone being available. He said there
25 was a breakdown also of communications. Mr. Danis is

1 appearing today and saying, oh, I filled out all the answers
2 to all the things that the Court wanted, despite not
3 complying with the order.

4 So either Mr. Danis is not representing things
5 accurately and Mr. Berman's deliberately ignoring your order
6 despite what his client did, or something else is happening
7 here, which is very troubling to hear all that.

8 And putting aside the motion to withdraw issue,
9 this was a continuation of yesterday's hearing. And
10 yesterday's hearing had two issues: one, the motion to
11 withdraw; and then there's the issue of your Court did want
12 to explore without prejudice to any ability to oppose it next
13 week, the issues with respect to disposition of the phone.

14 So they're all kind of wrapped up in one another --

15 THE COURT: They overlap. That's for sure.

16 MR. SHUMOFSKY: So it's -- I lay those things out
17 for further exploration because it's tough for plaintiff's
18 counsel to figure out exactly how to navigate between certain
19 ones and represent next week at a deposition where we expect
20 the other issues, absent further inquiry from defendant.
21 It's tough to take a firm position because it's a very moving
22 target right now.

23 THE COURT: Fair enough.

24 And there are a bunch of moving pieces.

25 I have to say, Mr. Doherty, it wasn't my intention

1 today -- and I discussed this with counsel yesterday -- to
2 question Mr. Danis about the phone. Obviously, the phone's
3 been the subject, particularly in the last month and a half
4 or two months, of considerable efforts by the parties and the
5 Court to just understand the status of the phone, the status
6 of the text messages.

7 And -- I'm sorry. I am not trying to be rude. I
8 want to just pull up the docket.

9 So my understanding had been, based on
10 Mr. Berman's -- let me backtrack.

11 August 20th, the defense told plaintiff that
12 Mr. Danis's cell phone had, quote/unquote, died.
13 Apparently -- I don't know whether it had gotten fried during
14 charging, whatever.

15 And because of that and because Mr. Danis didn't
16 have that phone backed up, there were no longer any text
17 messages for the relevant time period.

18 At that point, though, Mr. Berman said that he had
19 personally searched Mr. Danis's cell phone and iCloud for
20 messages, but there were basically no retrievable text
21 messages.

22 On August 27th, we had a conference where
23 Mr. Berman represented that the old phone still exists and
24 that Mr. Danis has it.

25 And so I issued an order that Mr. Danis was to give

1 Mr. Berman the cell phone. That's the August 27th, 2024,
2 order. That's again, August 27th.

3 And then August 30th, Mr. Berman tells us that
4 Mr. Danis can't find the phone, the old phone. And then I
5 issued -- I did a text order or a series of text orders that
6 basically said, Mr. Danis must look for the phone and I want
7 a status report by September 10th and if the phone is not
8 found, a declaration from Mr. Danis about various questions
9 about the old phone.

10 I didn't get that. And so the next day,
11 September 11th, I issued another order pointing out that I
12 still hadn't gotten the status report and declaration from
13 Mr. Danis. And so I ordered that to be filed by close of
14 business on September 11th.

15 I still haven't gotten the status report and
16 declaration.

17 Instead, what I got on September 12th was
18 Mr. Berman's motion to withdraw, which, of course led to the
19 text order for the conference yesterday.

20 So for at least the last month or so, we've all
21 been operating under the impression, that contrary to
22 Mr. Berman's representation on September 27th -- sorry --
23 August 27th -- that Mr. Danis had the phone, based on what
24 Mr. Berman told us on August 30th, that he didn't have the
25 phone.

1 I'd be remiss if I didn't mention the fact that the
2 phone was sort of there on August 27th and not there on
3 August 30th struck me as suspicious.

4 But I understand now that notwithstanding this
5 entire rigamarole that -- for lack of a better word -- that
6 the Court's had to go through, that plaintiff's counsel's had
7 to go with through, Mr. Danis has had that phone all along?

8 MR. DOHERTY: So the short answer is I don't know.
9 I can assure the Court that Mr. Berman was inquiring to
10 Mr. Danis and attempting to comply with the Court's
11 directives.

12 THE COURT: Right. Look, I've known Mr. Berman for
13 quite some period of time. And whatever the disagreements or
14 issues between he and Mr. Danis, Mr. Berman has always been
15 nothing but an upstanding, straightforward advocate. So this
16 is all in that context.

17 I am not -- I am not questioning for one moment
18 Mr. Berman's good-faith representations to the Court.

19 But there's clearly either some sort of
20 miscommunication or misunderstanding here.

21 MR. DOHERTY: Based on what you just read, I would
22 agree with that. But I can't say that I've been involved in
23 the specific details that the Court is addressing right now.

24 THE COURT: Can I ask you to do -- because I do see
25 that Mr. Danis wants to speak.

1 But I think the better way to proceed, for purposes
2 of avoiding any further confusion and, frankly, for
3 Mr. Danis's own best interests, I would ask you -- and you
4 can use the jury conference room, if you want -- have a
5 conversation with Mr. Danis right now about what is the
6 status of the old phone? All right? Does he have it? If he
7 does have it, then is it on him? Because, if so, consistent
8 with my order going all the way back to August 27th, he must
9 give that to you. If he doesn't have it -- if he doesn't --
10 if he has it -- if Mr. Danis has it at home, then he has to
11 get that to you by close of business tomorrow. All right?
12 And if he doesn't have it, then at least you can tell us
13 that, because I do think in the interests of fairness to all
14 parties and so that we're not chasing our tails
15 meaninglessly, the Court and plaintiff should have an
16 understanding of that before we leave here today.

17 So do you mind taking whatever time you need but,
18 say, 10, 15 minutes -- you can have the jury conference room.

19 Antonio, we'll go off the record. And we'll see if
20 you're ready again at quarter of?

21 MR. DOHERTY: Very good, Judge. I'll alert your
22 clerk as soon as we're ready.

23 THE COURT: All right.

24 Mr. Shumofsky, does that make sense to you?

25 MR. SHUMOFSKY: Yes, Your Honor.

1 THE COURT: All right. I'll see you folks in 15
2 minutes.

3 (Recess)

4 THE COURT: All right.

5 So, Mr. Doherty, what's the status with the phone?

6 MR. DOHERTY: Judge, he -- Mr. Danis does, in fact,
7 have --

8 THE COURT: He does.

9 MR. DOHERTY: -- what I'll refer to as his old
10 phone.

11 THE COURT: Right.

12 MR. DOHERTY: He tells me that that phone cannot be
13 accessed, but he's going to deliver it to my office by the
14 close of business tomorrow. We will, obviously, safeguard
15 the phone, take a look at it, and work with opposing counsel
16 to figure out the best way to see if there's anything to
17 discover on that phone.

18 THE COURT: I assume plaintiff is going to want to
19 do a forensic analysis of it?

20 MR. SHUMOFSKY: Yes, Your Honor. In fact, we would
21 ask to be able to take possession of the phone and send it
22 right to a forensic analyst at our expense, and we can work
23 with opposing counsel with respect to how that's done or if
24 there's any privileged information. But, otherwise, we might
25 be getting --

1 THE COURT: There shouldn't be because there are
2 no -- shouldn't be any communications on it, according to
3 Mr. Danis.

4 But, yeah, I mean, maybe use a filter team or some
5 way of making sure that trial counsel are not privy to any
6 privileged communications.

7 Is there any -- I mean, Mr. Berman had actually
8 offered it, back at the October [sic] 27th hearing. He said,
9 "My understanding is the phone still exists, so if somebody
10 wants to have it examined, that's possible. It hasn't been
11 discarded."

12 I would be inclined to grant plaintiff's
13 application, Mr. Doherty, unless you have any objection.

14 MR. DOHERTY: Judge, I think just to the point that
15 you made, I would appreciate my firm getting the phone
16 tomorrow just so that we can take a quick look at it and make
17 sure there's no privileged communications.

18 And I have no issue turning it over to plaintiff's
19 counsel.

20 THE COURT: All right. Terrific.

21 MR. DOHERTY: And if I could just double back
22 and --

23 THE COURT: Yeah, go ahead.

24 MR. DOHERTY: -- clarify one thing for the record.
25 So in Mr. Berman's August 27 letter to the Court

1 wherein he said he had looked at the phone.

2 THE COURT: Yeah.

3 MR. DOHERTY: What he was talking about was
4 Mr. Danis's current phone or the --

5 THE COURT: That would actually make sense --

6 MR. DOHERTY: -- the new phone, for lack of a
7 better term.

8 THE COURT: Right. Right. Because previously --
9 that would make sense. That would make sense, because if
10 the -- old phone has always been inaccessible, then there's
11 no way that he could have looked at old phone. So, okay,
12 fair enough.

13 All right. So just to recap, the parties will work
14 out -- Mr. Danis will get the phone to Mr. Doherty and
15 Hartmann Doherty by close of business today.

16 The parties will work out the turning over of that
17 phone to plaintiff's counsel.

18 The deposition will go forward on October 8th.

19 And then maybe what we'll do is reconvene for a
20 status conference before the end of October to take up the
21 issue of the motion to withdraw.

22 Is that fair?

23 MR. DOHERTY: Very good, Judge.

24 THE COURT: Mr. Shumofsky?

25 MR. SHUMOFSKY: That makes sense, Judge.

1 Just for a point of clarification, I think
2 Your Honor just said that it should be turned over by close
3 of business today.

4 THE COURT: No, to Mr. Doherty.

5 MR. SHUMOFSKY: Right. Right. Originally I
6 thought you said tomorrow.

7 So I just wanted to make sure that we were --

8 THE COURT: No, I was thinking -- but they
9 offered -- then Mr. Doherty said that Mr. Danis is going to
10 get it today. So --

11 MR. SHUMOFSKY: Fine, Your Honor.

12 THE COURT: -- don't need to delay.

13 MR. SHUMOFSKY: The -- I think that resolves
14 certain issues.

15 We would ask whether it's because of Mr. Danis's
16 contempt of Your Honor's several orders, but we would like
17 a -- to make an oral application right now and if not, we
18 can -- for attorney's fees with respect to chasing after the
19 phone for the last month. It seems to be a colossal waste of
20 time, including the Court's.

21 THE COURT: Can I offer something on that?

22 MR. SHUMOFSKY: Yup.

23 THE COURT: That's going to be part of -- what
24 you're essentially going to be arguing -- and I don't want to
25 presage your argument for you, but it's either going to be a

1 withholding argument under Rule 37 -- Rule 37(c) -- hold on.
2 Sorry. Yeah, it's either going to be a Rule -- I assume it's
3 going to be in the nature of a Rule 37(c) motion for
4 sanctions for failing to disclose, supplement an earlier
5 response or to admit, which essentially serves -- or, I
6 suppose, (D), failure to respond to a request for inspection
7 because of the protracted nature of what's gone on.

8 I get that.

9 All I'm say -- I guess what I want to avoid is
10 having to do this either piecemeal or duplicatively, because
11 you're going to take the deposition of Mr. Danis specific to
12 a number of these issues on Tuesday; right? I think
13 especially for something like this, it's a fact-intensive
14 analysis. Everybody and certainly I am going to need as
15 complete a record as possible.

16 So I understand that the issue is still
17 percolating. I am not blind to it.

18 But I think it would be premature to raise this now
19 because you're still taking discovery on what happened with
20 the phone and the text messages. Right?

21 MR. SHUMOFSKY: Your Honor, that makes sense. I
22 mean, there seems to be, you know, a two -- two issues that
23 getting more information would be helpful. One is --

24 THE COURT: Yeah.

25 MR. SHUMOFSKY: -- potentially preservation-related

1 | issues, which is separate to the fact that plaintiff has
2 | wasted time, you know, over the last month chasing after
3 | that --

4 | THE COURT: Right. It could be theoretically -- if
5 | I understand your position -- I am not endorsing it. I'm
6 | just trying to think my way through it. There's a potential
7 | spoliation issue, and there's also a failure to produce,
8 | withholding issue.

9 | Again, I don't know that there has been spoliation.
10 | I am not going to prejudge the issue.

11 | I'll want to hear from both sides about that. But
12 | I'd rather do it all at once, rather than piecemeal, and on a
13 | full record.

14 | So that's why I think maybe what we do is let's get
15 | the deposition done. I have to assume that Hartmann Doherty
16 | is still going to seek to be relieved. Maybe they won't
17 | after they speak further with Mr. Danis. I'm going to have
18 | to hear from them on that. And we'll also discuss the
19 | possible sanctions motion if plaintiff still wants to make it
20 | and the time frame for that. It's going to be really a time
21 | frame/sequencing issue.

22 | MR. SHUMOFSKY: That makes sense, Your Honor.

23 | With respect to Tuesday, if we get more specificity
24 | and guidance from the Court about what the scope is of the
25 | deposition so we know going in -- we certainly had a sense

1 that we're going to be asking about the phone and discovery,
2 et cetera.

3 But to the extent that, you know -- obviously,
4 there would be a separate substantive deposition about the
5 facts of this case.

6 THE COURT: Yeah.

7 MR. SHUMOFSKY: Wanted to make sure if there's any
8 more we should be discussing now in advance of Tuesday to
9 sort of, you know, head off any potential issues that comes
10 up with respect to not answering certain questions or he will
11 answer questions.

12 THE COURT: Well, look, a couple of things. One,
13 if there are any issues about the scope or disputes -- and
14 I'll offer this to both sides; I think it was in the
15 scheduling order too because this is in all my scheduling
16 orders -- and there's a -- and I do it for the parties so
17 that you're not spending a whole bunch of money and time on
18 stuff that would be more efficiently resolved. If there is a
19 dispute at the deposition, an instruction not to answer or
20 something like that, call me from the deposition. Okay?
21 I'll always answer. If I'm on the bench, I'll get back to
22 you as soon as I get off the bench. And that way we don't
23 have to do the same deposition multiple times or we get into
24 these sort of letter-writing changes where everybody wants to
25 have the last word.

1 You folks can call me from the deposition.
2 Mr. Danis, who's the witness, will step out. I'll hear from
3 each side. I'll rule. And you can get the whole discovery
4 deposition done on Tuesday and try and at least keep some
5 costs down.

6 In terms of the scope, I think we've already
7 addressed that; right? It's going to be the text -- the
8 discovery-related -- specific subject matter: the text
9 messages; the not backing up the phone; the confusion about
10 the old phone, what happened with the old phone.

11 And I understand you're going to be taking this
12 deposition before you've had a forensic examination of it,
13 but, you know, we operate in an imperfect world; right?

14 So that will be the subject matter.

15 I don't know what else today I can really cover to
16 lend any more specificity or clarity.

17 Mr. Doherty, it looked like you had something you
18 want to say.

19 MR. DOHERTY: Yes, Judge, if I said that I was
20 going to get the phone from Mr. Danis today, I misspoke. If
21 the Court would indulge me and allow Mr. Danis to give me the
22 phone tomorrow, I would appreciate it.

23 THE COURT: All right. By close of business
24 tomorrow and no later. Okay?

25 MR. DOHERTY: By close of business tomorrow. Thank

1 you.

2 MR. SHUMOFSKY: With respect to that, Your Honor,
3 can we have opposing counsel file something one way or the
4 other at close of business tomorrow, not -- not the next
5 morning --

6 THE COURT: Because I feel so involved in this,
7 yeah, I'd like a confirmation letter, if you don't mind,
8 Mr. Doherty, that once the phone has been turned over, Judge,
9 this will confirm, as we discussed at the conference
10 yesterday, I and my firm has now taken possession of the old
11 cell phone from Mr. Danis.

12 And file that on the record so you have visibility
13 too.

14 MR. SHUMOFSKY: Thank you, Your Honor.

15 And, finally, with respect to that, considering the
16 journey we've been over the last month about this --

17 THE COURT: Right.

18 MR. SHUMOFSKY: -- you know, I'm, frankly -- we're
19 skeptical of whether or not the phone will actually appear
20 and this actually will happen tomorrow.

21 But with respect to that, one thing --

22 THE COURT: Well, I want -- let me stop you right
23 there.

24 Look, and I am not going to prejudge the issue, but
25 if after everything we've been through concerning the phone,

1 if the phone is not in Mr. Doherty's or Mr. Berman's or the
2 Hartmann Doherty's hands tomorrow by 5:00 o'clock, I'm going
3 to be really, really, really unhappy. And there will be
4 consequences to that. All right? I don't want to go down
5 that road because that stuff doesn't advance the ball. It
6 just makes everything more complicated, more expensive. It's
7 a colossal waste of time that none of us has to waste. All
8 right?

9 So let's just get the phone turned over.

10 But if it's not, there are going to be serious
11 consequences to that. I don't know -- like I say, I don't
12 want to belabor the point.

13 MR. SHUMOFSKY: Yes, Your Honor. I appreciate all
14 that.

15 And just to press the issue just a little further,
16 if there's anything else that needs to be raised -- because
17 one thing that has come up over the last month is the fact
18 that the issue has been that Mr. Danis doesn't appreciate the
19 significance of all this, and he's not sophisticated --

20 THE COURT: Well, I don't know what Mr. Danis
21 appreciates or doesn't appreciate.

22 But I think -- look, I don't know what else I could
23 possibly say today. I think we all know where we stand. If
24 there's any confusion about that, Mr. Doherty, Mr. Berman
25 still represent Mr. Danis. They're more than capable of

1 explaining it to him.

2 But I don't want to presuppose or prejudge what
3 Mr. Danis does or doesn't understand or takes seriously.
4 We've been very clear. He's clearly -- Mr. Danis is
5 articulate. He understands, I think, what I've said.

6 I don't know what else I can say.

7 MR. SHUMOFSKY: Thank you, Your Honor.

8 THE COURT: All right. And we'll push out a date
9 for a conference call before -- we'll try and do it before
10 the end of October. My schedule right now is just beyond
11 full.

12 But we'll find us some time, and we'll push out a
13 date for that. Okay?

14 MR. DOHERTY: Very good. Thank you, Judge.

15 THE COURT: All right. Any other questions?
16 Anything else we can run to ground today?

17 MR. SHUMOFSKY: No. Thank you for the Court's
18 time.

19 THE COURT: All right. All right. Be well. All
20 right? Have a good afternoon.

21 (Conclusion of proceedings)

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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 27 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

4th of October, 2024

Signature of Approved Transcriber

Date

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